

## REMARKS

Reconsideration of this Application is respectfully requested. Claim 3 only is amended. Claims 8-17 are cancelled, without prejudice or disclaimer. New claims 20-27 are added. Support for these claims may be found, for example, in the specification on page 3, lines 15-18. Claims 1-7 and 18-27 are now in this case.

Initially, the Examiner rejected claim 8 under 35 U.S.C. § 112, first and second paragraphs, on grounds of non-enablement and indefiniteness, respectively.

Specifically, with respect to the allegations of non-enablement, the Examiner takes the position that the claim contains subject matter which is not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. More particularly, according to the Examiner, claim 8 specifically recites “said manually-operable member is attached to a shaft that is mounted for axial reciprocating movement”. (emphasis added). The Examiner asserts that this limitation is clearly drawn to the embodiment depicted in FIG. 4. He explains that, as disclosed at page 5, lines 21-25, an “alternative drive system is shown in Figs. 4 to 7...the pedals 30 [manually-operable members] are attached to the lower ends of two parallel pedal shafts 32, which are mounted for axial movement...” (emphasis added). The Examiner does not consider lever 6 (FIG. 1) to be “mounted for axial reciprocating movement”, nor does he believe that such is disclosed in Applicant’s specification. The Examiner continues, while it is true that lever 6 may theoretically move with a very slight axial component, he does not consider Applicant’s allegedly new interpretation of the embodiment of FIG. 1 to be reasonable in light of Applicant’s specification.

As for the Examiner’s position regarding indefiniteness, he finds Applicant’s

recitation of a “shaft mounted for axial reciprocating movement” to be vague and indefinite. In addition, the Examiner considers Applicant’s assertion that lever 6 is “mounted for axial reciprocating movement” to be inconsistent with the specification. On this basis, the Examiner concludes that the scope of claim 8 cannot be determined.

Accordingly, the Examiner states that if Applicant agrees that claim 8 does not reasonably read on the elected embodiment, such should be indicated in response to this Office Action, and claim 8 would then be withdrawn from further consideration.

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While Applicant respectfully disagrees with the Examiner’s position set forth above, independent claim 8 and dependent claims 9-17 are cancelled, without prejudice or disclaimer.

Applicant, therefore, respectfully requests that the rejections of claim 8 under § 112, first and second paragraphs, be withdrawn as moot.

\* \* \* \* \*

Next, the Examiner rejected claims 1, 2, 4, 8 and 18 under 35 U.S.C. § 102(b) as being anticipated by Kludszuweit. He also rejected claim 8 under § 102(b) as “clearly anticipated” by Christiansen.

According to the Examiner, Kludszuweit discloses, in Fig. 7, a drive system having the structure as claimed. The system, the Examiner continues, includes a manually-operable member 1.1, a first lever 2, a second lever 1, a tie rod 3, and a hydraulic pump 4. Specifically, with regard to claim 8, the Examiner states that “shaft” 1 is considered to be “mounted for axial reciprocating movement” to the same degree as lever 6 of the elected embodiment. As for the Examiner’s rejection of claim 8 over Christian-

sen, he directs Applicant to “[s]ee fig. 2”.

\* \* \* \* \*

Finally, the Examiner rejected claims 3, 7 and 19 under 35 U.S.C. § 103(a) as being obvious and, therefore, unpatentable over Kludszuweit in view of Bortolin.

In particular, the Examiner takes the position that Kludszuweit teaches substantially all that is claimed. The Examiner indicates that although it is likely that Kludszuweit includes two lever systems and a hydraulic motor, he acknowledges that such is not clear from the reference. Accordingly, the Examiner then looks to Bortolin which, he asserts, discloses a hydraulic drive train including two lever systems (col. 3, line 6) and a hydraulic motor 47. The Examiner concludes that it would have been obvious to modify Kludszuweit with the teachings of Bortolin to include two lever systems and a hydraulic motor. He also determined that it would have been obvious to modify Kludszuweit to include two lever systems and a hydraulic motor so as to provide an efficient drive means.

\* \* \* \* \*

Applicant, however, respectfully disagrees with the Examiner’s reading and application the cited references to the present invention.

In particular, Applicant’s invention, as set forth in claim 1, includes a first lever (arm 1) constructed and arranged for limited reciprocating rotation of a second end about a first pivot. Based upon this arrangement, the upstroke and downstroke are of equal duration, thereby ensuring that the pedals always move in opposite directions so that (i) greater force can be applied to the pedals, and (ii) the cyclist to establish a more comfortable riding rhythm.

Unlike Applicant's invention, Kludszuweit utilizes a crank (lever 2) that does not reciprocate, but rather rotates continuously in a generally circular fashion. This distinction, we respectfully submit, is illustrated in FIGS. 9 and 13 of Kludszuweit by the relative positions of lever 2 and the pedal at selected points along their respective paths. In FIG. 13, for example, the circular path circumscribed by the end of lever 2 is segmented into twenty-four fifteen degree portions, each portion being numbered consecutively from 0 to 23. As also shown in FIG. 13, the corresponding positions of the pedal are indicated along it's substantially elliptical path. Hence, when the end point of lever 2 is at a position 6 along the circular path, the pedal is at a position 6 along the elliptical path. In turn, during the downstroke (positions 23 to 16) lever 2 rotates through about 255°, whereas during the upstroke (positions 16 to 23) lever 2 rotates through approximately 105°. As a result, the upward and downward movements of lever 1 of Kludszuweit are uneven.

This means that Kludszuweit's pedals do not always move in opposite directions. In fact, we submit, at the beginning and end of the downstroke, both pedals will be moving downwardly at the same time. During this phase of movement, the force that can be applied by the cyclist to the pedals is limited to his or her weight as it is extraordinarily difficult, not to mention impractical and uncomfortable, for the cyclist to pull with one leg while pressing with the other.

Accordingly, it is respectfully submitted that Kludzuweit neither discloses nor suggests Applicant's invention, as claimed.

\* \* \* \* \*

As for Bortolin, Applicant respectfully submits that this reference generally describes two (2) different embodiments that use hydraulic motors and pumps. The first embodiment is disclosed, for instance, in Figure 3 and in column 2, line 66 - column 3, line 28, whereas the second is set forth, for example, in Figures 8 and 9 and in column 4, line 40 - column 6, line 13.

Applicant respectfully submits, however, that neither embodiment discloses, nor do they suggest, a lever arrangement as claimed by Applicant. Nor does either embodiment disclose or suggest a hydraulic motor arrangement for providing a gearing effect, as presented in new claims 20 and 24-27.

\* \* \* \* \*

Regarding Christiansen (and Bortolin), Applicant reiterates that claim 8 is cancelled, without prejudice or disclaimer. The Examiner's rejections of claim 8 under § 102(b) are, thereby, rendered moot.

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Applicant, therefore, respectfully submits that none of the cited references, taken alone or in any combination, disclose or suggest his invention, as claimed.

Based on the foregoing, withdrawal of the Examiner's rejections under § 112, first and second paragraphs, § 102(b) and § 103(a) are respectfully requested.

Applicant has made a good faith attempt to place this Application in condition for allowance. Favorable action is requested. If there is any further point requiring attention prior to allowance, the Examiner is asked to contact Applicants' counsel at (212) 768-3800.

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Respectfully submitted,



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on March 24, 2004

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